

In the Matter of Merchant Mariner's Document No. Z-209666 and all  
other Licenses, Certificates and Documents  
Issued to: GEORGE E. HARRIS

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

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GEORGE E. HARRIS

The appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

Pursuant to the Commandant's order of 3 November 1953 which remanded this case for further proceedings, the hearing was reopened on 3 February 1955 at Mobile, Alabama, by the same Examiner of the United States Coast Guard who had presided at the original hearing.

By order dated 7 February 1955, the Examiner again revoked Merchant Mariner's Document No. Z-209666 issued to George E. Harris upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a messman on board the USNS ANACOSTIA under authority of the document above described, on or about 19 January 1953, while said vessel was at sea, he wrongfully had in his possession a narcotic substance; to wit, marijuana.

When the hearing was reopened on 3 February 1955, the Examiner rejected Appellant's prior plea of "guilty" and entered a plea of "not guilty" in accordance with 46 CFR 137.09-45. Appellant was represented by an attorney of his own choice.

The Investigating Officer introduced in evidence several depositions and two additional documentary exhibits. Counsel objected to the testimony in the deposition of the U. S. Customs Chief Chemist to the effect that the deponent did not analyze the substance in question but that it was identified as marijuana. The ground for the objection was that the testimony of the Chief Chemist, as to the identification, was hearsay which was not within any exception to the hearsay rule.

In defense, Appellant offered in evidence his own sworn testimony. Appellant stated that since tobacco could not be purchased on the ship while running coastwise, he bought what he thought was some loose tobacco, in a plain bag, while ashore at

Panama; the purchased substance had a peculiar odor like a Turkish cigarette; Appellant smoked one cigarette made with this substance and it made him feel dizzy; he stored it in his locker and did not smoke it again. Appellant added that he had never seen marijuana before and knew nothing about it except what he read in the daily papers.

At the conclusion of the hearing, having given both parties an opportunity to submit argument as well as proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-209666 and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that:

1. The decision of the Examiner is harsh, unjust and contrary to the law and facts.
2. The Federal judge and other Federal officials advised Appellant that he could go back to sea.
3. The decision of the Examiner is harsh and unjust for the reason that this is Appellant's first offense.
4. There is no admissible evidence, in the nature of expert testimony, that the substance was marijuana.
5. No person testified, of his own knowledge, that the substance was marijuana.
6. Appellant had many occasions on which he could have disposed of the substance prior to the inspection.
7. Appellant has been going to sea since he was 18 years of age, he is now married and has two children. If he is deprived of the right to engage in his only occupation, he will be unable to support his family.

In conclusion, it is respectfully requested that the Commandant reverse the Examiner's decision and restore Appellant's document to him.

APPEARANCES: Mr. Wallace L. Johnson of Mobile, Alabama, by  
Kenneth R. Martin, Esquire, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

#### FINDINGS OF FACT

On 19 January 1953, Appellant was serving as a messman on

board the USNS ANACOSTIA and acting under authority of his Merchant Mariner's Document No. Z-209666 while the ship was at sea.

On this date, the Master of the ship conducted an unexpected search after he had been informed by the Chief Steward that one of the members of his department had possession of some marijuana. During this search, the Master saw, in Appellant's locker, a jar containing a quantity of a substance which the Master thought was marijuana. When the Master asked Appellant what was in the jar, Appellant said that it was tobacco. Appellant picked up the jar and the Master took possession of it and the contents.

The Master retained possession of the substance and turned it over to a U. S. Customs Inspector when the ship arrived at San Diego, California. Subsequent analysis, at the U. S. Customs Laboratory at Los Angeles, disclosed that the substance consisted of two ounces of marijuana. On the basis of these facts, Appellant was convicted by the U. S. District Court for the Southern District of California, Southern Division, on an indictment alleging that, on or about 22 January 1953, Appellant violated the smuggling statute (18 U.S.C. 545) as a result of his activities in connection with approximately two ounces of bulk marijuana. Appellant was placed on probation for five years and fined \$100.

There is no record of prior disciplinary action having been taken against Appellant during his eight or nine years at sea.

#### OPINION

The prima facie case made out against Appellant by proof of physical possession of the marijuana was not rebutted by Appellant's denial of knowledge that the substance was marijuana. The Examiner specifically stated that he refused to believe Appellant's denial because his entire story seemed improbable. In support of the latter, the Examiner considered it unlikely that Appellant would have purchased ordinary tobacco in a plain bag without any identification; and that Appellant would have retained possession of an unknown substance with a peculiar odor after it made him feel dizzy. The Examiner also disbelieved Appellant because he said the Master found the substance during a general inspection while the Master said it was located at the time of a special search which none of the crew knew about beforehand. In addition to these reasons for discrediting Appellant's denial, it is significant that the marijuana was in a bag when Appellant obtained it and in a jar when it came into the Master's possession. Why did Appellant put the substance in a jar if he had no use for it?

Concerning the nature of the substance and the objections to

portions of the deposition by the Chief Chemist, the substance was identified as marijuana by other evidence than the testimony by the Chief Chemist. Although the Federal court conviction does not directly support the specification because the dates in the indictment and specification do not coincide, Appellant indicated in his own testimony that the conviction resulted from his possession of the substance which the Master found in Appellant's locker; and the indictment specifically refers to approximately two ounces of marijuana. Also, the Customs Report of Seizure states that the substance consisted of two ounces of marijuana; the Master thought it was marijuana; and even Appellant stated that he later believed it to be marijuana. These factors definitely complete the chain of evidence showing that the substance confiscated by the Master was analyzed and found to be marijuana.

The Master was very definite in his testimony that the members of the crew were not advised of the search and that they had no way of knowing about the search beforehand. Therefore, Appellant did not have any opportunity to dispose of the marijuana after he became aware that an unscheduled search was being conducted.

Any promises which may have been made to Appellant, about his being permitted to go back to sea, are not in any manner binding in these proceedings and they cannot be allowed to interfere with the statutory duty of the Coast Guard to protect lives and property at sea. The policy of revocation in narcotics cases is so stringent that it has been made mandatory by regulation. 46 CFR 137.03-1. Consequently, the order of the Examiner will be sustained regardless of the personal hardship involved and Appellant's prior clear record.

#### ORDER

The order of the Examiner dated at Mobile, Alabama, on 7 February 1955 is AFFIRMED.

A. C. Richmond  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D. C., this 6th day of June, 1955.